IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 482 OF 2004.

1. Mr. Michael Denney,
major of age, and his wife;

2. Rita Denney,
major of age,
both r/o H.No. 19, Sangolda,
Bardez, Goa. ..... Petitioners.

Versus

Mrs. Olinda Rodrigues,
alias Olinda D'Souza,
major of age,
married, housewife,
r/o H. No. 17,
Sangolda, Bardez, Goa. .... Respondent.

Shri V. Menezes, Advocate for the Petitioners.

Shri S.S. Kantak, with Ms. R. Chodankar, Advocates for the Respondent.

CORAM: D.D. SINHA, J.

DATE: 21st NOVEMBER, 2005.

ORAL JUDGMENT:

Heard Shri V. Menezes, learned Advocate for the Petitioners and Shri S. Kantak, learned Advocate for the respondent.

2. Rule. Rule made returnable forthwith by consent of the parties.

3. Writ Petition is directed against the Order dated 22nd July, 2004 whereby the application made by the petitioners for amendment of the written statement filed in the counter claim came to be rejected.

The following facts are not in dispute:-

4. The plaintiffs have filed their written statement to the counter claim and have incorporated all the relevant facts in the written statement. The facts alleged in the affidavit-in-rejoinder, demonstrate that the facts mentioned therein could not be incorporated in the original written statement filed by the petitioners in the counter claim. However, those facts were specifically stated in the affidavit-in-rejoinder. The petitioners made an application seeking permission to amend the written statement for the purpose of incorporating the facts stated in the rejoinder.

5. The learned counsel for the petitioners has contended that in view of the above referred facts, the trial Court ought to have allowed the application for amendment since all these facts were already before the Court as mentioned in the affidavit-in-rejoinder and therefore the permission to amend the written statement ought to have been granted accordingly.

6. Mr. Kantak, the learned counsel for the respondent on the other hand

contended that the petitioners at the time of filing the written statement to the counter claim, were very much aware of these facts and therefore ought to have incorporated all these facts in the written statement and on failure to do so the trial Court was justified in rejecting the application for amendment.

7. I have considered the contentions canvassed by the learned counsel for the parties. In the instant case since the above referred facts are not in dispute it is therefore evident that the facts which the petitioners want to incorporate by way of amendment in the written statement were already before the Court and mentioned in the affidavit-in-rejoinder. In that view of the matter, no prejudice as such would be caused to the other side. Hence, the order impugned in my view and in view of the peculiar facts of the case cannot be sustained in law.

8. In the circumstances the impugned Order dated 22nd July, 2004 is hereby quashed and set aside. Civil Misc. Application 64/2004/C in Special Civil Suit No.44/2002/C stands allowed. The petitioners are entitled to carry out appropriate amendment accordingly. Rule made absolute in the above terms. No order as to costs.

sl. **D. D. SINHA, J.**